No. 221.
Brf. of States for Appellee Contra to Amend Order

Office Supreme Court U. S.
FILED
MAY 9 1902
JAMES H. McKENNEY,

Filed May 9, 1902.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 221.

S. D. HATFIELD AND NANCY C. RUTHERFORD,
APPELLANTS,

vs.

HENRY C. KING, APPELLEE.

NOTE IN OPPOSITION TO APPELLANTS' MOTION TO AMEND ORDER OF REMAND.

MAYNARD F. STILES.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 3091

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 221.

S. D. HATFIELD AND NANCY C. RUTHERFORD, APPELLANTS,

vs.

HENRY C. KING, APPELLEE.

Note in Opposition to Appellants' Motion to Amend Order of Remand.

I.

By the act of Congress of January 22, 1901, the judicial district of West Virginia was divided into two districts—the northern and the southern—with provision that causes and proceedings *then pending* in the courts of the district of West Virginia as constituted before the passage of the act, of which, if they had been brought after the act, the courts of the southern district would have had jurisdiction, should be transferred to the southern district. All other causes, of course, fell to the northern district; and there was a further

provision the purpose and intention of which was that all cases and matters that were "in the breast" of the district judge of the district of West Virginia, the Honorable John J. Jackson, should be disposed of in the northern district and by him, without reference to the portion of the State in which such causes or proceedings originated.

Under this act it has been the practice of Judge Jackson to make proper distribution of causes pending at the time of the passage of the act, by suitable orders.

The act in terms applies only to "causes and proceedings * * * now pending in the courts of the judicial district of West Virginia"—that is, at the time of the passage of the act, and at that time the above-entitled cause was not pending in such court, but had previously been removed therefrom by appeal from a final decree and was pending in this court and was not within the operation of the act.

If this be looked upon as a narrow view, it is at least broad enough to sustain the order of this court remanding the cause to the northern district, where, if desired, such motion may be made upon the question of transfer as the party may be advised is proper. The cause could not properly be remanded elsewhere.

II.

But there were two distinct matters before this court. One was a motion to amend the decree and remand the cause for further proceedings; the other was an application of various persons for the disbarment or other punishment of counsel for alleged contempt. Entitling the papers upon which the latter application was based the same as the appeal was entitled did not make it any proper part of that case, which was a suit to quiet title; so far indeed as the motion against counsel for the appellee is concerned, was not made by either of the appellants, but by strangers to the case.

The act of Congress referred to has no possible application in any way to the motions and proceedings against counsel nor the disposition to be made of the same by any court. The circuit court of neither district ever had jurisdiction of them. They were never in any court of either district nor any other court but this. They were original applications to this court invoking its original and independent jurisdiction and action. They could be addressed only to this court or to the judge charged to have been imposed upon, who was the judge of the northern district of West Virginia at the time the charges were made.

This court could entertain the complaint or refer the matter to that judge, who, from his presumed acquaintance with the parties and the transaction before him, would be most suitable to inquire into the matter and most likely to arrive at a proper conclusion. This court, presumably upon those considerations, for they were the ones advanced upon the argument, saw fit to refer the charges to that judge. In this it exercised its discretion, and was not influenced and could not be controlled by the act in question. If the matter were to be sent to some other judge than the one before whom the alleged misconduct occurred, this court could as well send it to Texas, so far as the act mentioned is concerned.

The gentlemen do not object to the principle laid down by the court that the investigation should be had "before the judge who, if the charges are correct, has been imposed upon." They do not question its soundness as a precedent, but they object to its governing the case in which it is established. To gratify their purpose, this court must disregard consistency.

And why do the gentlemen object to the matter going before Judge Jackson? They affect to see something in his opinion or in the affidavit of Mr. Flesher "apparent to the discriminating reader," such as themselves, but obscure to this court and the rest of us. Their recently inflamed sense

of delicacy forbids them to state a reason, but they ask this court upon their mere nod and innuendo, and the suggestion that it is their desire to make an order that would necessarily in some unknown way, and for some undisclosed and undiscoverable reason, directly reflect upon the district judge, who has had a long and honorable career.

Whatever advantage or gratification it might afford the opponents of Mr. King, or some of the counsel who represent them, to distract the attention of Mr. King's counsel by a defensive personal fight under the most unfavorable conditions they can bring about, or to remove him altogether if possible, they have no vested rights in the matter. It is an affair that belongs to the court and not to them, and it is not deemed likely that this court will feel an interest in bringing about, without manifestly good reason, a situation that might require Judge Jackson to go into the witness-box concerning matters charged to be in contempt of him instead of sitting in judgment thereon.

There is another consideration that makes against the motion. The judge of the southern district of West Virginia, before whom it is proposed to send said cause and investigations, was at the time of his recent appointment, and for many years prior thereto, the law partner of Mr. Edgar P. Rucker, who has participated in the prosecution of the motions against the counsel of Mr. King, and the fact that the firm had been counsel in some of the "King cases" has heretofore led Judge Kellar to decline to act in cases in which Mr. King is a party; and whether disqualified or not to conduct the proposed investigation of the conduct of Mr. King's counsel, it is perceivable that to do so would at least be embarrassing. Some of the counsel upon this motion are fully cognizant of this situation.

The failure of this counsel to produce in this court certificates of his good character and conduct was occasion for the criticism of opposing counsel. Before Judge Jackson, before whom he has practiced constantly for nine years, he does not

hesitate to say that he believes such evidence will be unnecessary, and if in that time he has earned the good opinion of the court, this court will neither regret the fact nor begrudge any advantage he may have from it, however unfortunate it may seem to opposing counsel or parties.

It is respectfully submitted that the motion should be overruled.

MAYNARD F. STILES.

INDEX.

	Page.
Motion for rule against H. C. Flesher to dismiss appeal and cause.	1
Petition of Stuart Wood and others for rule against Henry C. Flesher, and to remand cause	5
Motion on behalf of State of West Virginia	23
Petition of intervention and motion to dismiss of A. M. Toler	29
Petition of intervention and motion to reverse and remand of Arthur D. Bright	33
Exhibit No. 1—Deposition of John A. Sheppard	37
No. 2—Deposition of W. E. Chilton	42
No. 3—Deposition of Wm. R. Thompson	45
No. 4—Joint resolution of house of delegates of West Virginia	47
No. 5—Meeting of the board of public works	49
No. 6—Deposition of Nancy C. Browning	50
No. 7—Deposition of Sarah D. Hatfield	54
Complaint of Henry C. King against Simon S. Altizer and others	58
Declaration of ejectment	60
Bill of complaint of Henry C. King	62
Application of complainant for injunction	63
Sarah Hatfield authorizing employment of Henry C. Flesher as attorney	63
Exhibit No. 8—Deposition of W. A. Lee	65
Deed of Aly Hatfield and Anna Hatfield	65
No. 10—Deposition of A. M. Toler	68
No. 11—Deposition of J. M. Toler	70
No. 12—Deposition of Ferrell Hatfield	72
No. 13—Deposition of Claude L. Ganjot	74
Deed between Joseph Hatfield and wife and Henry R. Phillips	76
No. 14—Deposition of Wm. Claypool	80
No. 15—Deposition of Amanda Claypool	82
No. 16—Deposition of Edwin M. Keatley	83
No. 17—Deposition of Edwin M. Keatley	84
No. 18—Deposition of L. B. Dellicker	85
No. 19—Bill of complaint and exhibits	86
Stipulation to continue the case	89
Deposition of L. B. Dellicker	91
Order to vacate	92
Exhibit No. 20—Action of ejectment	95
No. 21—Nancy C. Browning granting power of attorney	97
No. 22—Deposition of John A. Sheppard	98
No. 23—Deposition of A. M. Toler	101
No. 24—Letter to Messrs. Conrad, Hubbard, Lyon and Campbell, Holt and Campbell	104
No. 25—Letter to John A. Sheppard	106
No. 26—Deposition of Edward C. Lyon	108
No. 27—Deposition of S. U. G. Rhodes	109

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 221.

S. D. HATFIELD AND NANCY C. RUTHERFORD, APPELLANTS,

vs.

HENRY C. KING, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF WEST VIRGINIA.

Motion for a Rule against H. C. Flesher and to Dismiss the Appeal and also the Cause.

And now comes Nancy C. Browning, erroneously called in this record Nancy C. Rutherford, for the special purposes of this motion, and for no other purpose, and respectfully shows that she is aggrieved by the pendency in this court of the above-entitled cause, in which she is made to appear as one of the parties appellant, and by the unauthorized appearance for her by said Henry C. Flesher, both in this court and in the court below, and by the alleged final decree of the lower court.

She now avers that this appeal was taken without her authority, knowledge, or consent, and that the said Henry C. Flesher, who has assumed to appear for her as her attorney both in this court and in the court below, had no authority whatever to appear for or to represent her in either court; that she was not served with process to answer the bill in the court below, and had no knowledge, notice, or information whatever of the institution, pendency, or decision of said suit in the court below or of the unauthorized appearance for her by said Henry C. Flesher till some time after this court had made the order of the 21st day of January, 1901, setting aside the submission of this cause and directing oral argument therein; that the allegation in the bill that the said Henry C. King had actual possession of the lands described in said bill, and that neither she nor her mother, S. D. Hatfield, nor those under whom they hold said lands, had such actual possession, is absolutely false and untrue and known to be false by the said Maynard F. Stiles, the attorney for the said Henry C. King; and other allegations of said bill are false, fraudulent, and fictitious.

That she has other good and valid defenses to the alleged claim of title of the said Henry C. King.

That she has retained W. P. Hubbard, E. P. Rucker, C. W. Campbell, and John Sheppard as counsel to represent her and to protect her interest in the lands described in said bill.

She begs leave to file herewith as parts hereof the warrant of attorney to the said W. P. Hubbard and others, and also her own and her mother's affidavit, and to refer to the other affidavits and documents filed with the intervening petition of Stuart Wood and others in support of the foregoing averments as Exhibits Nos. 6 and 7.

And she prays:

1st. That the said W. P. Hubbard, E. P. Rucker, C. W. Campbell, and John A. Sheppard may be permitted to ap-

pear here for her for the purposes of this motion and to represent her therein.

2d. That a rule be awarded by this court against the said Henry C. Flesher to show by what authority, if any, he represented or assumed to represent her in the court below and in this court, and why he shall not be attached and his name stricken from the roll of attorneys practicing in this court for his contempt offered this court in falsely assuming to act for her as her attorney in taking and prosecuting said appeal here, and in imposing upon this court a false, fictitious, and manufactured case for the purpose of obtaining this court's opinion on a false statement of facts, to her great injury and to the injury of others similarly situated, but not parties to said suit or appeal.

3d. She also prays that the alleged final decree of the court below be declared absolutely null and void, and that this appeal and said fictitious cause be dismissed; and, in duty bound, she will ever pray, etc.

NANCY C. BROWNING.
By W. P. HUBBARD.
C. W. CAMPBELL.

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 221.

S. D. HATFIELD AND NANCY C. RUTHERFORD,
APPELLANTS,

vs.

HENRY C. KING.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Petition of Stuart Wood and Others for Rule against Henry C. Flesher and to Remand the Cause.

Your petitioners, Stuart Wood, King Hiram Blankenship, L. D. Chambers, Margaret L. Chambers, Crockett Allison, Joseph Hinchman, W. E. Justice, W. A. Johnson, R. L. Joyce, W. T. Kenneda, John Kenneda, F. M. Kenneda, Bruce McDonald, Willard McDonald, G. R. McDonald, J. F. Paull, A. M. Toler, Alexander Trent, A. A. Vance, Grayton Mining Company, Grayton Water Works and Improvement Company, Forest Coal Company, Spruce Coal and Lumber

Company, William McGee, Richard Torpin, trustee; John Lambert, Jr., trustee; George Wharton Pepper, trustee; J. L. Caldwell, John Q. Dickinson, C. W. Campbell, Egbert Mills; Egbert Mills, trustee; Arthur D. Bight; Arthur D. Bight, trustee; William H. Lawson, and William Kronenwelt, show to the court that they are aggrieved by the pendency in this court of the above-entitled cause and by the decree from which this appeal is taken, rendered in the United States circuit court for the district of West Virginia. They pray that the appeal be dismissed and the cause remanded to the lower court with directions to dismiss the same, or that for reasons herein shown the entire proceeding, as well in the lower court as in this court, be dismissed, and for grounds of this petition they show the following:

There are now pending in the courts of the State of West Virginia and in the United States courts sitting within that State very many cases relating to the lands claimed by Henry C. King, aggregating, according to the grant under which he claims, 500,000 acres, and to which suits there are defendants numbering more than four hundred. These suits are of various kinds, a large number of them being ejectment suits, others suits in equity in which injunctions have been applied for against some of the defendants, and still others are proceedings on the part of the State of West Virginia to sell, as lands forfeited to the State, some part of the lands claimed by said King. In all these cases the same question is presented which is sought to be presented to the court in the above-entitled suit, and in very many of those cases that question is of serious importance.

Your petitioners are informed and believe that this suit has been brought and carried on by the said King without the knowledge of any person interested in the questions involved in this proceeding, and even without the knowledge of the nominal defendants to this suit, up to the time the same was submitted to this court on the 7th day of January, 1901, and for some time thereafter the said King hoping

that by this fictitious proceeding a declaration might be obtained from this court of very great importance and affecting the title to the large area of lands already mentioned and the rights of very many persons who are parties to the actions and suits now pending for the recovery thereof and above mentioned.

In support of the foregoing statement, your petitioners beg leave to refer to the affidavits of John A. Sheppard, William E. Chilton, and William R. Thompson, filed as Exhibits 1, 2, and 3; the joint resolution of the legislature of West Virginia, filed as Exhibit 4, and to the copy of the resolution of the board of public works of the State of West Virginia, filed as Exhibit 5 herewith.

Your petitioners are all owners of parts of the said Morris tract of 500,000 acres and are nearly all parties defendant to the suits and actions pending in the State and Federal courts in West Virginia for the recovery of said lands.

That, while not parties to the above-entitled cause, they are so nearly and directly interested in the subject-matter thereof and in the questions involved in that cause as to be interested in the result thereof, and their interests would be seriously imperiled and jeopardized should the object sought to be attained by this appeal be accomplished. That object they believe and charge to be to obtain from this court in this feigned and fictitious suit the expression of such an opinion or the determination of such facts as would operate as a complete bar to the just and valid defenses which they are seeking to maintain in the actions and suits now pending against them.

Your petitioners are represented by able, efficient, and vigilant counsel in the actions and suits now pending against them in the State and Federal courts in West Virginia, and both they and their attorneys have been alert and vigilant in their efforts to acquire knowledge of all the proceedings of every description undertaken by Henry C. King and by those who represent him for the recovery of

any part of the said Morris tract in any of the said courts in West Virginia.

That they have at all times kept themselves well informed of every suit and action that has been instituted for this purpose; that this claim on behalf of Henry C. King involves the title to a very large part of the lands in West Virginia; that it has attracted the attention and excited the interest and induced the action, not only of the large number of persons directly interested, but of nearly all the population of the State in the region where this large tract lies, and also of the public officers and authorities of the State of West Virginia itself; and yet, notwithstanding this deep interest and the active efforts on the part of parties and counsel to acquire information as to the movements and actions of said Henry C. King and his attorneys with respect to said land, so far as your petitioners have been able to learn, the institution of the above-entitled cause in the circuit court, its pendency therein, the decision thereof, and the appeal to this court have been throughout entirely unknown to any one outside of the said Henry C. King and his attorneys, Maynard F. Stiles and Henry C. Flesher.

That the above-entitled cause does not appear, from the records of the said circuit court of the United States for the district of West Virginia, to have been formally and regularly instituted and proceeded in in that court; but it does appear that no process ever issued against either of the defendants in that cause, and that the orders and decrees which now appear to have been made therein were not entered in the order book of the court, and it does not appear from the records of that court to have been pending therein until the time when application was made by the counsel in said cause to the deputy clerk of said court to certify a transcript of said record for the purposes of this appeal. (See Exhibits Nos. 17, 22.)

I.

This court is without jurisdiction over the persons who appear as parties appellant in this record.

Your petitioners are informed and believe and here charge:

(1.) That the said "Nancy C. Rutherford and S. D. Hatfield" never authorized this appeal to be taken for them or in their names, and never knew of its pendency here until advised of it about the — day of February, 1901; that Henry C. Flesher, who appears by the record to have appeared as their attorney and who assumed to represent them in this cause in the circuit court of the United States for the district of West Virginia, was not in fact the attorney for them or either of them authorized or empowered to represent them in this cause in that court, or to take this appeal for them or in their names to this court; that neither of them were ever served with process to appear and answer the bill filed in this cause in the circuit court, nor did they or either of them appear thereto or authorize or empower said Henry C. Flesher or any other person to appear or plead for them or either of them; that they did not authorize the demurrer to said bill to be filed for them, nor did they know of the filing of said demurrer or of the proceedings had in said cause.

In support of these allegations, they refer to the affidavits of Nancy C. Browning, falsely called Rutherford, and Sarah D. Hatfield, which are filed herewith as exhibits numbered 6 and 7.

II.

The entire proceedings had in this cause both in the circuit court and in this court were feigned and fictitious and in contempt of each court and in fraud of the rights of the defendants in the court below and named as appellants here.

(*a.*) The manifest purpose and object of the persons taking part in the institution and prosecution of these proceedings was to obtain by fraudulent misrepresentation a decree of the Supreme Court of the United States which might be used by them in preventing or defeating the defenses that are now and hereafter may be set up to this suit and to the multiplicity of other suits instituted and now pending in the courts of West Virginia for the recovery of the land claimed by King from the *bona fide* holders thereof.

(*b.*) That the persons by whom these fraudulent and fictitious proceedings have been instituted and conducted are Maynard F. Stiles and Henry C. Flesher; that each of these persons named is the agent and attorney of Henry C. King, in whose name and on whose behalf they have in fact appeared and employed their efforts and continue to do so.

(*c.*) That the said Flesher has, in this proceeding, assumed, without color of authority or right or duty, to appear for and in behalf of "Nancy C. Rutherford" as her duly constituted attorney, and to file pleadings in her name, and to enter into agreements and stipulations and waiver of rights for her, and to take this appeal in her name as "Nancy C. Rutherford," all and each of which acts and doings were altogether without any warrant of authority from her, but were in willful disregard of her rights in the premises and also in manifest ignorance of the name of the person for whom he assumed to appear, whose real name is and has

since 1895 been, by reason of her marriage, Nancy C. Browning, the zeal of the attorney actually blinding him as to the name of the client whom he assumed to represent.

(*d.*) The jurisdiction of this court in this case was obtained by allegations made in the bill, which were false in fact and without which no jurisdiction could attach in such a case, in this, to wit:

"That your orator is the owner in fee and is in the actual possession of a certain tract of land situate partly in said district, in the counties of Wyoming, Logan, Mingo and McDowell and partly in the States of Kentucky and Virginia," etc.; "and

"That your orator is without any plain, speedy and adequate remedy at common law because your orator being in possession of his said grant, and the defendants not being in possession of the said lands claimed by them under said fraudulent instruments, your orator is advised that no action at law will lie against them," etc.

Whereas, as your petitioners aver, the appellee, Henry C. King, was not at the time of filing said bill, is not now, and never has been, in possession of the lands claimed by the said Browning and Hatfield, or in possession of the lands embraced in the grant claimed by him; but that the fact is that said Nancy C. Browning and S. D. Hatfield and those under whom they claim have been in continuous, open, adverse, notorious, and exclusive possession of all the lands claimed by them and sought to be recovered from them by this bill for more than thirty years, subject to the conveyance of the minerals thereunder, made as herein stated by Joseph Hatfield and wife to Henry R. Phillips, trustee.

The want of possession by the plaintiff and the possession by the defendants is established in part by the fact that the said King brought actions in ejectment against many persons, including these defendants, among such actions being "the suit against said defendant and others" mentioned in the bill of the said King in this cause.

That this fact of the possession of the said defendants of these lands bars the jurisdiction of a court of equity and discloses the want of such jurisdiction, and further establishes the defense of adversary possession under the statutes of limitation.

That the decree of the circuit court of Wyoming county, exhibited with the bill in this cause as Exhibit "Wyoming 1897," and relied on here as entitling the complainant to the relief prayed, at the time of the filing of this bill had been assailed and impeached by an independent suit in chancery in said court, charging that said decree had been obtained by the complainant through the fraud of his counsel, the said Maynard F. Stiles, and the taking advantage in any way of said decree had been restrained by an injunction awarded by the judge of said court, which injunction is still operative and is now and was at the date of the filing of this bill and of the decree made thereon in the circuit court of the United States for the district of West Virginia pending in said United States circuit court, to which it had been removed from the circuit court of Wyoming county. (See transcript of bill and decree in said cause, filed here as Exhibit No. 19.)

Further, the said decree of the circuit court of Wyoming county here exhibited had been by the State of West Virginia taken on appeal to the court of appeals of that State and had been superseded. Thereafter, and before the hearing in the United States circuit court of this cause, that decree of the Wyoming circuit court had been reversed, so far as it permitted the redemption of the lands from forfeiture.

(*e.*) It is charged in said bill "that afterwards the said Aly died intestate without having disposed of his pretended title or claim to said 330 or 450 acre tracts, leaving surviving him his only heir-at-law one Joseph Hatfield, who thereafter laid claim to said two tracts."

The said allegation being false in this, that the said Aly

Hatfield had in his lifetime, to wit, on March 14, 1861, disposed of a part of the 330-acre tract by a deed conveying 150 acres thereof to Martha Toler, his daughter, which deed was among the public records of Logan county, out of which Mingo county was thereafter formed.

Further, it is charged in said bill that "the said Joseph Hatfield died intestate, leaving as his only heirs-at-law the defendants above named, who thereupon set up claim of title to the land embraced in said pretended grants and deeds and now wrongfully claim title thereto."

Whereas the truth and fact is that the said Joseph Hatfield in his lifetime, with his wife, the said Sarah D. Hatfield, on October 15, 1889, conveyed the minerals under said land to Henry R. Phillips, trustee, which deed is among the public records of said Logan county, and the said defendants have always recognized the right of the said Phillips, trustee, and his assigns to the said minerals.

If the truth had been told in the bill, the said Henry R. Phillips, trustee, and any persons claiming under him, as well as the said Martha Toler and any claiming under her, would have been necessary parties defendant to the said bill.

In proof of the falsity of these allegations of the bill petitioners beg leave to refer to the transcript of the partial record aforesaid; to the report of the case of the State of West Virginia *vs.* Henry C. King, in 47 West Virginia Reports, page 437; to the duly certified copies of the deed from Aly Hatfield to Martha Toler, and the deed from Joseph Hatfield and Sarah D. Hatfield, his wife, to Henry R. Phillips, trustee, filed herewith as Exhibits —, —, —, —, —, —, —, —, —, —; to the affidavits of Nancy C. Browning, Sarah D. Hatfield, A. M. Toler, J. M. Toler, Ferrill Hatfield, and Claude L. Gaujot, filed herewith as Exhibits Nos. 8, 9, 10, 11, 12, 13.

(*f.*) That the fraudulent intent and purpose of the said Flesher in assuming to act as counsel for said Nancy C. Rutherford and Sarah D. Hatfield in the pretended defense

of their rights in this cause is apparent from this: That although the bill which he undertook to defend against made specific charges of fraud in the procurement of their title by Aly Hatfield, the grandfather, and by Joseph Hatfield, the husband of Sarah D. Hatfield, and also made the other false and fraudulent representations already recited, yet he, the said Flesher, expressly waived, on behalf of the parties he assumed to represent, the right to deny these material allegations of the bill, but did, on the contrary, admit the truth of the same by filing a demurrer to the bill and resting the final determination of the cause, both in the lower court and in this court, on such demurrer.

Further, that instead of demurring generally to the bill he confined said demurrer to the single feature of the constitutionality of the forfeiture laws of West Virginia, which course of professional conduct on the part of the said Flesher seems to sustain the inference that his sole object was to make a case on which there might be obtained from the Supreme Court of the United States the authoritative declaration of a principle which would serve only the interests and purposes of Henry C. King in the maintenance of suits and actions with which he was infesting the courts of West Virginia.

The location of the western line of the Robert Morris grant of 500,000 acres is vigorously disputed by the said King on one hand and the defendants in the several suits above mentioned on the other hand. Petitioner is advised that if that line is located according to the monuments called for in the grant, and that if it is located properly, the lands involved in this suit are not within the boundaries of the said Robert Morris survey. This defense, as petitioners are informed and believe, would have been a full answer to the claim set up by the said King in his bill, and she is confident such defense would have been successful if properly made. The facts supporting it could have been ascertained without difficulty, and such successful defense could have been made if

Henry C. Flesher, assuming to represent her, had intended to defend the suit against the petitioner in reality instead of defending a case for the purpose of obtaining an opinion from this court in the interest of Henry C. King only, and without argument or the opportunity for argument on behalf of those really interested against the rendition of such opinion.

In proof of the foregoing statement reference may be had to the affidavit of Nancy C. Rutherford and the affidavit of John A. Sheppard, herewith filed as Exhibits Nos. 1 and 7.

III.

The fraudulent intent and purpose of these attorneys, Maynard F. Stiles and Henry C. Flesher, as disclosed in this case, had been previously manifested by them in other proceedings instituted by them for the recovery of parcels of this same Robert Morris grant, in this, to wit:

(*a.*) It is charged in the bill that—

"Your orator is advised that it may be objected or suggested that your orator is negligent in bringing this bill, and that he ought not therefore to have the aid of a court of equity in this behalf; concerning which objection your orator shows that not only ought such objection not to be entertained in this court in which, up to a short time before your orator's purchase of said land the same had been held and managed as a trust estate, but at the time of your orator's said purchase he had no knowledge or notice of such adverse claims by the defendants or of the said pretended grants and deeds, but upon discovering the said claims to said tracts and other lands of your orator some time after his said purchase, your orator brought suit against said defendants and others. And in order to the determination of the legal controversy between your orator and these defendants, especially the question of forfeiture, there being no dispute of fact, *an agreed case* was by the parties heretofore, submitted to and received by this court upon briefs by its order, at its June term, 1895, the Honorable John J. Jack-

son, district judge, presiding; but by reason of the illness of the said judge, no decision of the case was rendered before the said cause of King *vs.* Mullens came on for trial in this court and no decision of said submitted cause has ever been rendered therein."

Your petitioners aver that had the whole truth been told in this bill the appellee would not have ventured to file it. The actual facts of that matter are these:

Some time in the year 1895 a declaration in ejectment was served upon Sarah D. Hatfield, accompanied by a restraining order. At that time considerable interest had been stirred up among the citizens owning land in Logan county, and Mrs. Hatfield had noticed a statement in the newspapers published at Logan Court-house with reference to the citizens employing lawyers to defend the title to their lands. H. K. Shumate, a lawyer then residing at Logan Court-house, whom she had known for a number of years and who had been her counsel in all the litigation she had had and who had been the attorney for her husband, came to her house with a man who was introduced to her as Maynard F. Stiles. They staid all night at her house, and while there Mrs. Hatfield mentioned to Mr. Shumate the fact that suit had been brought against her by Henry C. King for her land, and asked him to represent her in the case; he replied that he could not do so, as he was employed by Henry C. King, but that he was of the opinion it would not be necessary for her to make any defense; that they would not disturb a lone widow and orphans. About two months later the said Shumate and Stiles returned to her house and again staid all night. During the evening the said Stiles sought and obtained a conversation with her in reference to what had occurred between Mr. Shumate and her when they were at her house before Mr. Shumate told her that Mr. King and his counsel did not take anything from widows and orphans, and that they would like to see her protected in the ownership of her lands, and stated that if she would allow them to attend to

her interests in the suit brought by King against her that she would not have to pay any lawyers' fees or costs; that they would pay all expenses for her, and that she should not be out anything; that if it became necessary for her to go anywhere to aid them, that they would pay all of her expenses, and in the event King finally recovered her land that they would reconvey her lands to her, and that she should have the right to go on and remove any timber from her lands that she desired to.

Mr. Stiles further said that it would be better for her to make this arrangement with him than it would be for her to go to the expense of hiring a lawyer to defend her title, and that Mr. King and his counsel could afford to have her title defended for her, pay all the expenses connected therewith, and reconvey the lands to her, because it would save them a great deal of expense and probably save Mr. King this whole tract of land; that Mr. King and his counsel had certain lawyers employed who would take cases for the citizens sued by Mr. King and work to the interest of Mr. King in such cases, and that they could have one of such lawyers take care of her interest in the suit. She told Mr. Stiles that she did not know what lawyer she could get, to which Mr. Stiles replied that Major H. C. Flesher, of Welch, West Virginia, was doing business for King and his counsel, and that he could get Flesher to attend to her case. That some time after, Mr. Henry C. Flesher came to her on a railroad train and told her that he had been employed to look after her interests in the suit brought against her and others by Henry C. King; that a month later Flesher stated to her that he wanted her to sign a writing with him, which she did. She never saw or read the agreed statement of facts that she has been told was filed by the said Flesher in the Federal court at Parkersburg, which she is informed Flesher signed as counsel for William Claypool, Nancy C. Rutherford, and herself.

It further appears that the record in said ejectment case

in which the alleged agreement of facts was filed has mysteriously disappeared. Diligent search in the clerk's offices of the courts and in the offices of counsel in that case have been unable to recover it. It does appear, however, that the said Flesher signed such agreed statement of facts as attorney for Mrs. Hatfield, for Nancy C. Rutherford, and for William Claypool.

It appears further that upon the filing of said agreed statement of facts a rule was awarded against said Flesher to appear and show cause by what authority he had assumed to appear for and enter into such agreed statement of facts on behalf of William Claypool, whom he there assumed to represent, which said rule remains undisposed of.

The writing which Mrs. Hatfield signed at the request of Henry C. Flesher appears to be a paper bearing date of 1st of July, 1895, by which she is made to ratify and confirm all that Flesher had done in her name. It is enough to read the paper to see by whom it was prepared and what exigency it was intended to meet.

It further appears that William Claypool, one of the parties for whom said Flesher made said agreed statement of facts, made affidavit that some time in 1895 he was informed of the institution of the action of ejectment by Henry C. King, and that one "Colonel Wilder" and the attorney, H. K. Shumate, requested said Claypool to allow the said Henry C. King to represent or have represented the said Claypool in said action or suit, stating that he should be at no expense in employing counsel to defend his interest therein, or in paying any of the expenses attending the said action or suit, all of which would be paid by the said Henry C. King, and that no matter what was the result of said action or suit when finally determined, that said Claypool would be fully protected from the consequences thereof and in no event would he lose his land.

That said Claypool never saw Henry C. Flesher in regard to looking after his interest in said action or suit; that he

never employed him as his attorney in said action or suit, nor did he ever employ him in any capacity; that he did not employ said H. K. Shumate as his attorney to defend or protect his interests in said action or suit.

It further appears that the said Nancy C. Browning, called Rutherford, had not authorized or employed the said Flesher to appear as her counsel in the said ejectment suit or to enter into any agreed statement of facts for her or on her behalf, nor had she employed him at any time, in any proceeding, for any purpose to represent her as her attorney.

In support of these statements petitioners refer to the affidavits of William Claypool, Amanda Claypool, Sarah D. Hatfield, Nancy C. Browning, and John A. Sheppard, and the certificate of the clerk of the United States circuit court for the district of West Virginia, and the certificate of the clerk of the United States circuit court for the southern district of West Virginia, which affidavits and certificates are here filed as Exhibits Nos. (1), (6), (7), 14, 15, 16, 17, 18, 22; and the rule awarded by the United States circuit court in the case of *King vs. Altizer* against H. C. Flesher, filed here as Exhibit 20.

(*b.*) That the said Maynard F. Stiles in alleging in the bill in this cause that Henry C. King was in possession of the lands embraced in his grant, and that the petitioner and S. D. Hatfield were not in possession of the lands claimed by them, was stating what he well knew at the time to be untrue in fact, because it appears that he had for a long time been intimate with the lands of Mrs. Hatfield and Mrs. Browning, had repeatedly visited them, had spent considerable time on the lands, and was fully aware of their actual possession at the time of the filing of this bill, by residence, cultivation, and enclosure, long-continued.

That said Stiles was counsel for said Henry C. King in the actions of ejectment brought by said King against numerous defendants for lands alleged to be included in the

Morris grant, and among those defendants your petitioner and Mrs. Sarah D. Hatfield, against whom said King had brought ejectment for the lands now in question. and that such actions could not have been instituted and maintained without showing that King was out of possession and the defendants in possession of those lands; that said Stiles was therefore fully aware that the allegations in the bill in this cause that King was in possession of the lands embraced in his grant and the defendants were not in possession of the lands claimed by them was false. In support of these statements see affidavit of A. M. Toler, filed as Exhibit No. 23.

It is likewise manifest that as to many of the other matters which have been before shown were falsely stated in the said bill the said Stiles had full knowledge and was well aware that the statements in the bill in those particulars were not true.

(*c.*) The professional career of the said Maynard F. Stiles and Henry C. Flesher, as the same is disclosed by the public records of the courts of West Virginia, is altogether in keeping with their disreputable conduct as before herein disclosed, in this, to wit:

That in a proceeding by the State of West Virginia against Maynard F. Stiles in the circuit court of Wyoming county, it was by that court, on March 30, 1899, adjudged that the said Stiles "has conducted himself in a manner unworthy of a reputable attorney-at-law and has abused his privilege as an honorable member of the bar of this court so as to render it improper that he should be allowed to further practice his said office as attorney-at-law at the bar of this court, and doth therefore order that the name of the said Maynard F. Stiles be, and it is hereby, stricken from the roll of attorneys practicing at the bar of this court, and that he, the said Maynard F. Stiles, be, and he hereby is, forever

prohibited from exercising his said office of attorney-at-law in this court."

That upon a writ of error to said judgment from the supreme court of appeals of West Virginia, the said judgment was reversed and annulled, as appears from the report of said cause in 37 S. E. R., p. 620.

The acts of the said Stiles which were involved in that proceeding were acts done by him in the course of litigation carried on by him for his client, Henry C. King, with reference to claims made under his said Morris grant and in procuring the decree of redemption on September 30, 1897, which is mentioned in the bill of Henry C. King in this cause.

The facts respecting the acts of said Stiles in that respect appear fully from the record of that proceeding, a copy of which, printed for use in the hearing of said writ of error, is filed with the clerk of this court for such inspection and use as this court may think it entitled to.

That in the action at law of Thompson & Jackson against the said Henry C. Flesher in the circuit court of Jackson county, West Virginia, it was by that court, on the 19th day of March, 1892, adjudged that the said plaintiffs recover against the said Henry C. Flesher the sum of $212.97, with interest thereon, on account of the moneys collected by him as the attorney for the plaintiffs and then in his hands as such attorney; and it was "further considered by the court that the license of the said Henry C. Flesher as an attorney-at-law be, and the same is hereby, suspended until he, the said Henry C. Flesher, shall pay and satisfy to the plaintiffs the said sum of $212.97, with interest thereon from this day until paid."

A certified copy of the record of this proceeding is filed with the clerk of this court for such inspection and use as the court may see fit to give to it.

Your petitioners have filed with this their petition the affidavit of Mrs. Sarah D. Hatfield, who was one of the apparent defendants to the bill in the circuit court and one of

the appellants here. They think it proper to place this court in full possession of all the facts and circumstances within their knowledge affording light as to the motives and conduct of all the persons connected with the matter. They accordingly file here a letter of October 4, 1901, from Mr. John A. Sheppard to the counsel in this cause, showing how and on what conditions he obtained the affidavit of Mrs. Hatfield, and also the offer of indemnity to Mrs. Hatfield from some of the petitioners here, filed as Exhibits Nos. 24 and 25.

They also refer to the affidavit of Mr. Edward C. Lyon, filed here as Exhibit No. 26.

They also refer to the affidavit of S. U. G. Rhodes, here filed as Exhibit No. 27.

Your petitioners pray that they may be permitted to intervene in this proceeding, not for the purpose of becoming parties to the above-entitled cause, but for the purpose of challenging the jurisdiction of this court and of the circuit court, and of bringing to the attention of this court, in this direct form, the fact of the large and various ontstanding interests which would be injuriously affected by the opinion and decree sought to be obtained in this court, and of praying that all the proceedings had, as well in the lower court as in this court, be annulled and set aside, and that such action be taken by this court for the prevention of like wrongs and injuries as are here sought to be perpetrated as to the court may seem proper, and especially that such action be taken against the said Henry C. Flesher and Maynard F. Stiles, by whom these proceedings have been instituted and prosecuted, as may be adequate and efficient to prevent its repetition by them as enrolled attorneys of this court and of the circuit court.

HOLMES CONRAD,
W. P. HUBBARD,
C. W. CAMPBELL,
Counsel for Petitioners.